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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/614,346

07/08/2003

Frank Weiss

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02/07/2005

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EXAMINER

MCCALL, ERIC SCOTT

ART UNIT

PAPER NUMBER

2855

DATE MAILED: 02/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/614,346	<b>Applicant(s)</b> WEISS ET AL.	
	<b>Examiner</b> Eric S. McCall	<b>Art Unit</b> 2855	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_ is/are allowed.
- 6) ☒ Claim(s) 1 and 5-8 is/are rejected.
- 7) ☒ Claim(s) 2-4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/08/03 &amp; 1/05/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

**METHOD FOR DIAGNOSING INCORRECT VALVE LIFT  
ADJUSTMENT IN AN INTERNAL COMBUSTION ENGINE**

**FIRST OFFICE ACTION**

**INFORMATION DISCLOSURE STATEMENT**

The information disclosure statements filed on July 08, 2003 and Jan. 05, 2004 fail to comply with 37 CFR 1.98(a)(3) because they do not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

**DRAWINGS**

The drawings are objected to because the labeling as used therein is not in the English language.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### CLAIMS

#### 35 U.S.C. § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Frankl et al. (5,641,891). c

With respect to claims 1 and 6, Frankl et al. teach a method for diagnosing a defect in an adjustment mechanism for adjusting a valve lift of at least one inlet valve in an internal combustion engine, the operation of which is regulated by an operation control device, comprising:

monitoring an operating parameter (ie. flow value) of the internal combustion engine, which is set to a target value when the valve lift is actually adjusted by the operation control device (col. 1, lines 28-32); and

deducing a defect in the adjustment mechanism (ie. adjustment is needed) from a discrepancy between the operating parameter and the target value when a valve lift adjustment is triggered (col. 1, lines 33-36).

The Examiner notes that the “valve” as claimed by the Applicant is suggested/taught by the prior art because the claims only set forth the term “valve” in general terms and do not set forth the type of valve of the invention.

With respect to claim 7, Frankl et al. suggest that on identification of a defect in the adjustment mechanism (ie. the determined flow value is out of adjustment) it regulates the operation of the internal combustion engine according to an actual lift of an inlet valve at a time of an activated valve lift adjustment because eventhough the valve is out of adjustment the engine will still operate at a level dictated by the current valve operation while the valve is adjusted.

With regards to claim 8, Frankl et al. suggest that the operation control device activates an error display on identification of a defect in the adjustment mechanism because a flowmeter is set forth as being used wherein a flowmeter inherently has a display.

35 U.S.C. § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Frankl et al. (5,641,891).

With regards to claim 5, Frankl et al. fail to explicitly teach that the operation is carried out individually for each cylinder in the internal combustion engine.

However, it would have been obvious to one having ordinary skill in the art that such an operation is carried out individually for each cylinder in the engine.

The motivation being that the purpose of the Frankl et al. teaching is to determine and adjust the flow in valves of an engine wherein the word “valves” is set forth as being plural. It is commonly known that the number of valves of the type as set forth by Frankl et al. equal the number of cylinders in an engine. Therefore, if the purpose is to determine and adjust the flow in the valves then it would be reasonable to believe that the word valves implies all of the valves (ie. the operation is carried out individually for each cylinder in the engine as claimed) because if only some valves are monitored while others are not, the purpose of the invention, which is to get the engine running properly, would be defeated.

*Allowable Subject Matter*

Claims 2-4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims because the prior art fails to teach or suggest the parameters as claimed.

**REFERENCES CITED**

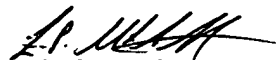
The Applicant's attention is directed to the enclosed "PTO-892" form for the prior art made of record in this action.

**CONTACT INFORMATION**

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Eric S. McCall whose telephone number is (571) 272-2183.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Eric S. McCall  
Primary Examiner  
Art Unit 2855  
Feb. 02, 2005